

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER**  
**DOCKET NO.: 2008-1578-WQ-E TCEQ ID: RN105483317 CASE NO.: 36633**  
**RESPONDENT NAME: ARNOLD TRUCKING, INC.**

Page 1 of 2

<b>ORDER TYPE:</b>		
<input type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input checked="" type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** north side of Loop 390 west of U.S. Highway 59 North, Marshall, Harrison County

**TYPE OF OPERATION:** sand and gravel mining

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** One complaint has been received. The complaint alleged that there were no storm water Best Management Practices being used and sediment was flowing off the site. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** The complainant has not indicated a desire to protest this action or speak at Agenda. No one other than the ED and the Respondent expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired August 10, 2009. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Ms. Becky Combs, Litigation Division, MC 175, (512) 239-6939  
Ms. Lena Roberts, Litigation Division, MC 175, (512) 239-0019

**TCEQ Enforcement Coordinator:** Mr. Steve Villatoro, Water Enforcement Section, MC 169, (512) 239-4930

**TCEQ Regional Contact:** Ms. Cara Fisher, (903) 535-5144, Tyler Regional Office, MC R-5, (903) 535-5100

**Respondent:** Ms. Sherrie Arnold, President, Arnold Trucking, Inc., 3805 FM 1996 N, Marshall, Texas 75670

**Respondent's Attorney:** Not represented by counsel on this enforcement matter.

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input checked="" type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date of Complaint Relating to this Case:</b> February 8, 2008</p> <p><b>Date of Investigation Relating to this Case:</b> Complaint Investigation February 27, 2008 Record Review Investigation July 24, 2008</p> <p><b>Date of NOE Relating to this Case:</b> October 31, 2008</p> <p><b>Background Facts:</b> The EDPRP was filed February 17, 2009, and mailed to the Respondent via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt "green card," the Respondent received notice of the EDPRP on February 20, 2009. The Respondent failed to answer the EDPRP, failed to request a hearing, and failed to schedule a settlement conference.</p> <p><b>Current Compliance Status:</b> Not yet in compliance.</p> <p><b>WQ:</b> Failed to obtain authorization to discharge storm water associated with industrial activities under a Texas Pollutant Discharge Elimination System Multi-Sector General Permit [30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c)].</p>	<p><b>Total Assessed:</b> \$3,150</p> <p><b>Total Deferred:</b> \$0  <input type="checkbox"/> Expedited Order  <input type="checkbox"/> Financial Inability to Pay  <input type="checkbox"/> SEP Conditional Offset</p> <p><b>Total Due to General Revenue:</b> \$3,150</p> <p>This is a Default Order. The Respondent has not actually paid any of the assessed penalty but will be required to do so under the terms of this Order.</p> <p><b>Site Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification:</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Ordering Provisions:</b></p> <p>The Respondent shall undertake the following technical requirements:</p> <ol style="list-style-type: none"> <li>1. Within 30 days, develop and implement a Storm Water Pollution Prevention Plan and submit a Notice of Intent, including associated application fees, to comply with the Multi-Sector General Permit requirements.</li> <li>2. Within 45 days, submit written certification demonstrating compliance.</li> </ol>



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision June 12, 2008

<b>DATES</b>	<b>Assigned</b>	29-Sep-2008	<b>Screening</b>	1-Oct-2008	<b>EPA Due</b>	
	<b>PCW</b>	11-Jan-2009				

<b>RESPONDENT/FACILITY INFORMATION</b>			
<b>Respondent</b>	Arnold Trucking, Inc.		
<b>Reg. Ent. Ref. No.</b>	RN105483317		
<b>Facility/Site Region</b>	5-Tyler	<b>Major/Minor Source</b>	Minor

<b>CASE INFORMATION</b>			
<b>Enf./Case ID No.</b>	36633	<b>No. of Violations</b>	1
<b>Docket No.</b>	2008-1578-WQ-E	<b>Order Type</b>	1660
<b>Media Program(s)</b>	Water Quality	<b>Government/Non-Profit</b>	No
<b>Multi-Media</b>		<b>Enf. Coordinator</b>	Steve Villatoro
		<b>EC's Team</b>	Enforcement Team 1
<b>Admin. Penalty \$ Limit Minimum</b>	\$0	<b>Maximum</b>	\$10,000

## Penalty Calculation Section

## TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 **\$3,000**

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **5.0% Enhancement** Subtotals 2, 3, & 7 **\$150**

Notes

The penalty is enhanced due to one NOV with violations same or similar to those cited in this action.

Culpability

No

0.0% Enhancement

Subtotal 4 **\$0**

Notes

The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply Total Adjustments

Subtotal 5 **\$0**

Economic Benefit

Total EB Amounts

\$182

Approx. Cost of Compliance

\$2,300

0.0% Enhancement\*

\*Capped at the Total EB \$ Amount

Subtotal 6 **\$0**

## SUM OF SUBTOTALS 1-7

Final Subtotal **\$3,150**

## OTHER FACTORS AS JUSTICE MAY REQUIRE

0.0%

Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount **\$3,150**

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$3,150**

## DEFERRAL

0.0%

Reduction

Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral not offered for non-expedited settlement.

## PAYABLE PENALTY

**\$3,150**

**Screening Date** 1-Oct-2008

**Docket No.** 2008-1578-WQ-E

**PCW**

**Respondent** Arnold Trucking, Inc.

Policy Revision 2 (September 2002)

**Case ID No.** 36633

PCW Revision June 12, 2008

**Reg. Ent. Reference No.** RN105483317

**Media [Statute]** Water Quality

**Enf. Coordinator** Steve Villatoro

### Compliance History Worksheet

**>> Compliance History Site Enhancement (Subtotal 2)**

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action <i>(number of NOVs meeting criteria)</i>	1	5%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability <i>(number of orders meeting criteria)</i>	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government <i>(number of judgements or consent decrees meeting criteria)</i>	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government <i>(number of counts)</i>	0	0%
Emissions	Chronic excessive emissions events <i>(number of events)</i>	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which notices were submitted)</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 <i>(number of audits for which violations were disclosed)</i>	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

**Adjustment Percentage (Subtotal 2)** 5%

**>> Repeat Violator (Subtotal 3)**

No

**Adjustment Percentage (Subtotal 3)** 0%

**>> Compliance History Person Classification (Subtotal 7)**

Average Performer

**Adjustment Percentage (Subtotal 7)** 0%

**>> Compliance History Summary**

**Compliance History Notes**

The penalty is enhanced due to one NOV with violations same or similar to those cited in this action.

**Total Adjustment Percentage (Subtotals 2, 3, & 7)** 5%

<b>Screening Date</b> 1-Oct-2008		<b>Docket No.</b> 2008-1578-WQ-E		<b>PCW</b>	
<b>Respondent</b> Arnold Trucking, Inc.		<small>Policy Revision 2 (September 2002)</small>			
<b>Case ID No.</b> 36633		<small>PCW Revision June 12, 2008</small>			
<b>Reg. Ent. Reference No.</b> RN105483317					
<b>Media [Statute]</b> Water Quality					
<b>Enf. Coordinator</b> Steve Villatoro					
<b>Violation Number</b> 1					
<b>Rule Cite(s)</b>		30 Tex. Admin. Code § 281.25(a)(4) and 40 Code of Federal Regulations § 122.26(c)			
<b>Violation Description</b>		Failed to obtain authorization to discharge storm water associated with industrial activities under a Texas Pollutant Discharge Elimination System Multi-Sector General Permit. Specifically, the Site was cleared, graded, and a drainage ditch was excavated for a sand and gravel mining operation, but the Respondent had not applied for a permit or developed and implemented a Storm Water Pollution Prevention Plan (SWP3).			
<b>Base Penalty</b>					\$10,000

**>> Environmental, Property and Human Health Matrix**

<b>OR</b>	<b>Harm</b>				
	<b>Release</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>	
	<b>Actual</b>				
	<b>Potential</b>				<b>Percent</b> 0%

**>> Programmatic Matrix**

<b>Falsification</b>				
<b>Major</b>	<b>Moderate</b>	<b>Minor</b>		
x				
<b>Percent</b> 10%				

**Matrix Notes**

100% of the rule requirement was not met.

**Adjustment** \$9,000

**Violation Events**

Number of Violation Events	3	69	Number of violation days
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<small>mark only one with an x</small>	daily	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$3,000

Three monthly events are recommended from the investigation date (July 24, 2008) to the screening date (October 1, 2008).

**Good Faith Efforts to Comply**

<b>0.0% Reduction</b>		
	<small>Before NOV</small>	<small>NOV to EDPRP/Settlement Offer</small>
Extraordinary		
Ordinary		
N/A	x	(mark with x)

**Notes**

The Respondent does not meet the good faith criteria for this violation.

**Violation Subtotal** \$3,000

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount	\$182
	<b>Violation Final Penalty Total</b> \$3,150
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$3,150	

## Economic Benefit Worksheet

**Respondent** Arnold Trucking, Inc.  
**Case ID No.** 36633  
**Reg. Ent. Reference No.** RN105483317  
**Media** Water Quality  
**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							
<b>Delayed Costs</b>							
Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction	\$2,000	27-Feb-2008	30-Apr-2009	1.17	\$8	\$156	\$164
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$300	27-Feb-2008	30-Apr-2009	1.17	\$18	n/a	\$18
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to develop and implement a SWP3, file the notice of intent (NOI) and file the annual water quality fee. Date required is the date the violation was first documented. Final date is the expected date of compliance.

<b>Avoided Costs</b>							
ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)							
Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$2,300

TOTAL

\$182

# Compliance History Report

Customer/Respondent/Owner-Operator: CN603336389 Arnold Trucking, Inc. Classification: AVERAGE Rating: 0.75  
Regulated Entity: RN105483317 ARNOLD MINE LOOP 390 Classification: AVERAGE Site Rating: 1.50  
ID Number(s):  
Location: NORTH SIDE OF LOOP 390 WEST OF U.S. HIGHWAY 59 Rating Date: 9/1/2008 Repeat Violator: NO  
NORTH IN, MARSHALL, HARRISON COUNTY, TX  
TCEQ Region: REGION 05 - TYLER  
Date Compliance History Prepared: October 10, 2008  
Agency Decision Requiring Compliance History: Enforcement  
Compliance Period: September 30, 2003 to September 30, 2008  
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History  
Name: Mark Oliver Phone: 239 - 3308

## Site Compliance History Components

1. Has the site been in existence and/or operation for the full five year compliance period? No
2. Has there been a (known) change in ownership of the site during the compliance period? No
3. If Yes, who is the current owner? N/A
4. If Yes, who was/were the prior owner(s)? N/A
5. When did the change(s) in ownership occur? N/A

## Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.  
N/A
  - B. Any criminal convictions of the state of Texas and the federal government.  
N/A
  - C. Chronic excessive emissions events.  
N/A
  - D. The approval dates of investigations. (CCEDS Inv. Track. No.)  
1 08/06/2008 (687734)
  - E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)  
Date: 04/04/2008 (640707)  
Self NO Classification: Moderate  
Citation: 30 TAC Chapter 281, SubChapter A 281.25(a)(4)  
Rqmt Prov: PERMIT TPDES Multi-Sector Industrial General  
Description: Failure to obtain authorization for discharges of storm water associated with industrial activity.
  - F. Environmental audits.  
N/A
  - G. Type of environmental management systems (EMSs).  
N/A
  - H. Voluntary on-site compliance assessment dates.  
N/A
  - I. Participation in a voluntary pollution reduction program.  
N/A
  - J. Early compliance.  
N/A
- Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
ARNOLD TRUCKING, INC.,  
RN105483317**

§  
§  
§  
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**BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY**

## **DEFAULT ORDER DOCKET NO. 2008-1578-WQ-E**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality, ("Commission" or "TCEQ") considered the Executive Director's Preliminary Report and Petition filed pursuant to TEX. WATER CODE chs. 7 and 26, 40 CODE OF FEDERAL REGULATIONS pt. 122, and the rules of the TCEQ, which requests appropriate relief, including the imposition of an administrative penalty. The respondent made the subject of this Order is Arnold Trucking, Inc. ("Arnold Trucking").

The Commission makes the following Findings of Fact and Conclusions of Law:

### **FINDINGS OF FACT**

1. Arnold Trucking operates a sand and gravel mining operation located on the north side of Loop 390 west of U.S. Highway 59 North, Marshall, Harrison County, Texas (the "Site").
2. The Site discharged waste into or adjacent to any water in the state or committed another act that has caused or will cause pollution of any state water under the Texas Water Code.
3. During a record review investigation on July 24, 2008, a TCEQ Tyler Regional Office investigator documented that Arnold Trucking failed to obtain authorization to discharge storm water associated with industrial activities under a Texas Pollutant Discharge Elimination System Multi-Sector General Permit. Specifically, the Site was cleared, graded, and a drainage ditch was excavated for a sand and gravel mining operation, but Arnold Trucking had not applied for a permit or developed and implemented a Storm Water Pollution Prevention Plan (SWP3).
4. Arnold Trucking received notice of the violation on or about November 5, 2008.



5. The Executive Director filed the "Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Arnold Trucking, Inc." (the "EDPRP") in the TCEQ Chief Clerk's office on February 17, 2009.
6. By letter dated February 17, 2009, sent via certified mail, return receipt requested, and via first class mail, postage prepaid, the Executive Director served Arnold Trucking with notice of the EDPRP. According to the return receipt "green card", Arnold Trucking received notice of the EDPRP on February 20, 2009, as evidenced by the signature on the card.
7. More than 20 days have elapsed since Arnold Trucking received notice of the EDPRP, provided by the Executive Director. Arnold Trucking failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference.

#### CONCLUSIONS OF LAW

1. As evidenced by Finding of Fact Nos. 1 and 2, Arnold Trucking is subject to the jurisdiction of the TCEQ pursuant to TEX. WATER CODE chs. 7 and 26, 40 CODE OF FEDERAL REGULATIONS pt. 122, and the rules of the Commission.
2. As evidenced by Finding of Fact No. 3, Arnold Trucking failed to obtain authorization to discharge storm water associated with industrial activities under a Texas Pollutant Discharge Elimination System Multi-Sector General Permit, in violation of 30 TEX. ADMIN. CODE § 281.25(a)(4) and 40 CODE OF FEDERAL REGULATIONS § 122.26(c).
3. As evidenced by Finding of Fact Nos. 5 and 6, the Executive Director timely served Arnold Trucking with proper notice of the EDPRP, as required by TEX. WATER CODE § 7.055 and 30 TEX. ADMIN. CODE § 70.104(a).
4. As evidenced by Finding of Fact No. 7, Arnold Trucking failed to file a timely answer to the EDPRP as required by TEX. WATER CODE § 7.056 and 30 TEX. ADMIN. CODE § 70.105. Pursuant to TEX. WATER CODE § 7.057 and 30 TEX. ADMIN. CODE § 70.106, the Commission may enter a Default Order against Arnold Trucking and assess the penalty recommended by the Executive Director.
5. Pursuant to TEX. WATER CODE § 7.051, the Commission has the authority to assess an administrative penalty against Arnold Trucking for violations of the Texas Water Code within the Commission's jurisdiction, for violations of rules adopted under such statutes, or for violations of orders or permits issued under such statutes.

6. An administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) is justified by the facts recited in this Order, and considered in light of the factors set forth in TEX. WATER CODE § 7.053.
7. TEX. WATER CODE §§ 5.102 and 7.002 authorize the Commission to issue orders and make determinations necessary to effectuate the purposes of the statutes within its jurisdiction.

### ORDERING PROVISIONS

NOW, THEREFORE, THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY ORDERS that:

1. Arnold Trucking is assessed an administrative penalty in the amount of three thousand one hundred fifty dollars (\$3,150.00) for violations of state statutes and TCEQ rules. The payment of this administrative penalty and Arnold Trucking's compliance with all the terms and conditions set forth in this Order completely resolve the matters set forth by this Order in this action. The Commission shall not be constrained in any manner from requiring corrective actions or penalties for other violations which are not raised here. All checks submitted to pay the penalty imposed by this Order shall be made out to the "Texas Commission on Environmental Quality". The administrative penalty assessed by this Order shall be paid within 30 days after the effective date of this Order and shall be sent with the notation "Re: Arnold Trucking, Inc.; Docket No. 2008-1578-WQ-E" to:

Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. Arnold Trucking shall undertake the following corrective measures:
  - a. Within 30 days after the effective date of this Order, Arnold Trucking shall develop and implement a SWP3 and submit a Notice of Intent, including associated application fees, to comply with the Multi-Sector General Permit requirements, to:

Wastewater Permitting Section  
Water Quality Division, MC 148  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

- b. Within 45 days after the effective date of this Order, Arnold Trucking shall submit written certification and detailed supporting documentation, including photographs, receipts, and other records, to demonstrate compliance with Ordering Provision No. 2.a. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Arnold Trucking shall submit the written certification and copies of documentation necessary to demonstrate compliance with Ordering Provision No. 2.a. to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Noel Luper, Water Section Manager  
Texas Commission on Environmental Quality  
Tyler Regional Office  
2916 Teague Drive  
Tyler, Texas 75701-3734

3. All relief not expressly granted in this Order is denied.
4. The provisions of this Order shall apply to and be binding upon Arnold Trucking. Arnold Trucking is ordered to give notice of this Order to personnel who maintain day-to-day control over the Site operations referenced in this Order.
5. If Arnold Trucking fails to comply with any of the Ordering Provisions in this Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, Arnold Trucking's failure to comply is not a violation of this Order.

Arnold Trucking shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. Arnold Trucking shall notify the Executive Director within seven days after Arnold Trucking becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.

6. The Executive Director may grant an extension of any deadline in this Order or in any plan, report, or other document submitted pursuant to this Order, upon a written and substantiated showing of good cause. All requests for extensions by Arnold Trucking shall be made in writing to the Executive Director. Extensions are not effective until Arnold Trucking receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
7. The Executive Director may refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings without notice to Arnold Trucking if the Executive Director determines that Arnold Trucking has not complied with one or more of the terms or conditions in this Order.
8. This Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Order, whichever is later.
9. The Chief Clerk shall provide a copy of this Order to each of the parties. By law, the effective date of this Order shall be the date the Order is final, as provided by 30 TEX. ADMIN. CODE § 70.106(d) and TEX. GOV'T CODE § 2001.144.

## **SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

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For the Commission

**AFFIDAVIT OF REBECCA M. COMBS**

STATE OF TEXAS           §  
                                     §  
COUNTY OF TRAVIS       §

"My name is Rebecca M. Combs. I am of sound mind, capable of making this affidavit, and the facts stated in this affidavit are within my personal knowledge and are true and correct.

On behalf of the Executive Director of the Texas Commission on Environmental Quality, I filed the 'Executive Director's Preliminary Report and Petition Recommending that the Texas Commission on Environmental Quality Enter an Enforcement Order Assessing an Administrative Penalty Against and Requiring Certain Actions of Arnold Trucking, Inc.' (the 'EDPRP') with the Office of the Chief Clerk on February 17, 2009.

I sent the EDPRP to Arnold Trucking at its last known address on February 17, 2009 via certified mail, return receipt requested, and via first class mail, postage prepaid. According to the return receipt 'green card', Arnold Trucking received notice of the EDPRP on February 20, 2009, as evidenced by the signature on the card.

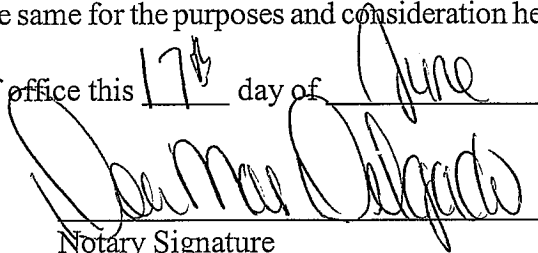
More than 20 days have elapsed since Arnold Trucking received notice of the EDPRP. Arnold Trucking failed to file an answer, failed to request a hearing, and failed to schedule a settlement conference."



Rebecca M. Combs  
Attorney  
Texas Commission on Environmental Quality

Before me, the undersigned authority, on this day personally appeared Rebecca M. Combs, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration herein expressed.

Given under my hand and seal of office this 17<sup>th</sup> day of June, 2009.



Notary Signature

